

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #3	CCRB Case #: 201901811	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/26/2019 10:45 PM	Location of Incident: 40 Beechwood Avenue and Crescent Avenue	Precinct: 120	18 Mo. SOL 8/26/2020	EO SOL 4/12/2021	
Date/Time CV Reported Wed, 02/27/2019 3:54 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/27/2019 3:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Cecilio Ramos	22729	947380	SRG 5
2. SGT Daniel Hachemeister	03870	949074	SRG 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Jennifer McGowan	05462	958903	SRG-5

Officer(s)	Allegation	Investigator Recommendation
A.POM Cecilio Ramos	Abuse: Police Officer Cecilio Ramos threatened § 87(2)(b) with the use of force.	
B.POM Cecilio Ramos	Discourtesy: Police Officer Cecilio Ramos spoke discourteously to § 87(2)(b)	
C.SGT Daniel Hachemeister	Discourtesy: Sergeant Daniel Hachemeister spoke discourteously to § 87(2)(b)	
D.SGT Daniel Hachemeister	Abuse: Sergeant Daniel Hachemeister questioned § 87(2)(b)	

## Case Summary

On February 27, 2019, § 87(2)(b) filed this complaint with a CCRB Intake Investigator via phone.

On February 26, 2019, at approximately 10:40 p.m., § 87(2)(b) was driving home along Jersey Street in Staten Island, when his vehicle was stopped by PO Cecilio Ramos and PO Jennifer McGowan, both of SRG-5. PO Ramos and PO McGowan instructed § 87(2)(b) to give them his license about five times, but each time § 87(2)(b) refused. This led to PO Ramos threatening to pull § 87(2)(b) out of the vehicle for refusing to comply with the instruction (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Ramos also told § 87(2)(b) “Don’t give us a fucking problem,” (**Allegation B: Discourtesy**, § 87(2)(g)). During the course of this interaction, Sgt. Daniel Hachemeister arrived at the scene and spoke with § 87(2)(b) as well. Sgt. Hachemeister, when explaining the situation, said to § 87(2)(b) “You were a little fucking nasty to my cop,” (**Allegation C: Discourtesy**, § 87(2)(g)). Later in the conversation, Sgt. Hachemeister explained that PO Ramos and PO McGowan might be writing § 87(2)(b) a summons, but also added a couple questions, asking, “No weapons in the car? No knives, nothing like that?” (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Ramos and PO McGowan issued § 87(2)(b) a summons for § 87(2)(b) and let him continue home, as they drove off to continue patrol.

Video footage of the vehicle stop was obtained from § 87(2)(b)’s cell phone on March 14, 2019 during his CCRB interview. The footage shows each of the allegations.

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: PO Cecilio Ramos threatened § 87(2)(b) with the use of force.**

It is undisputed that PO Cecilio Ramos threatened to remove § 87(2)(b) from his vehicle for not providing his license and registration. Video footage of the threat is contained within IA #23 (**Board Review 01**). After the officers asked for § 87(2)(b)’s driver’s license and registration, he repeatedly asked the officers why they needed his documentation while remaining seated in his vehicle and not taking any physical actions to interfere. PO Ramos is heard telling § 87(2)(b) “Giver her your license, registration and insurance, or I’m going to pull you out of the car.” In his CCRB interview, § 87(2)(b) stated that PO Ramos said this threat in response to his refusal to hand over his license (**Board Review 02**). In his CCRB interview, PO Ramos agreed that it was his voice and that the footage was an accurate representation of the allegation (**Board Review 03**). PO Ramos stated that § 87(2)(b) would have been pulled out of the vehicle for OGA. In her CCRB interview, PO McGowan stated that § 87(2)(b) could have been removed from his vehicle to aid with identification (**Board Review 04**).

*People v. Hensen*, 21 A.D.3d 172 (2005), states that police officers “may direct a driver to exit his vehicle out of a concern for their safety even though they may lack a specific reason for believing that the driver is in possession of a weapon,” (**Board Review 05**).

Second, New York State Penal Code §195.05 states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference or by means of any independently unlawful act (**Board Review 06**).

Finally, In *People v. Case*, 42 N.Y. 2d 98 (1977), it is stated that, “A fair reading of this section [195.05] can yield but one conclusion. The operative obstruction may be accomplished

‘by means of intimidation, physical force or interference, or by means of any independently unlawful act.’ If it be ‘interference’, then it must be physical interference, as ‘physical’ modifies ‘interference’ in the statute,” **(Board Review 07)**.

In *People v. Alston*, 9 Misc. 3d. (2005), the court found that a verbal refusal to provide a driver’s license does not in itself constitute OGA. However, the officers may arrest an individual to allow for proper identification as they may presume the person is driving without a license **(Board Review 16)**.

§ 87(2)(g)

**Allegation (B) Discourtesy: PO Cecilio Ramos spoke discourteously to § 87(2)(b)**

It is undisputed that PO Ramos told § 87(2)(b) “Don’t give us a fucking problem.” The video footage of the statement is contained within IA #25 **(Board Review 10)**. In his CCRB interview, PO Ramos admitted to making the statement and using the discourtesy because of § 87(2)(b) § 87(2)(b) s discourteous behavior, that § 87(2)(b) seemed not to understand plain English, and PO Ramos’ own frustration **(Board Review 03)**.

Patrol Guide Procedure Section 203-10 instructs NYPD officers to refrain from using discourteous and disrespectful remarks toward civilians **(Board Review 09)**.

§ 87(2)(g)

**Allegation (C) Discourtesy: Sgt. Daniel Hachemeister spoke discourteously to § 87(2)(b)**

It is undisputed that Sgt. Hachemeister told § 87(2)(b) “You were a little fucking nasty to my cops.” The video footage of the statement is contained within IA #25 **(Board Review 10)**. At this point in the conversation, § 87(2)(b) had given his information to PO Ramos and PO McGowan; § 87(2)(b) asked Sgt. Hachemeister why he was first stopped, and then why PO Ramos and PO McGowan had taken his information back to their police vehicle. In his CCRB interview, Sgt. Hachemeister identified his voice and admitted to the statement in response to § 87(2)(b) § 87(2)(b) s questions **(Board Review 11)**. Sgt. Hachemeister stated that he did not mean the statement discourteously, but instead to control the situation and stop § 87(2)(b) from talking so that he could listen.

Patrol Guide Procedure Section 203-10 instructs NYPD officers to refrain from using discourteous and disrespectful remarks toward civilians **(Board Review 09)**.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Sgt. Daniel Hachemeister questioned § 87(2)(b)**

It is undisputed that Sgt. Hachemeister questioned § 87(2)(b). Video footage of the questioning is contained within IA #25. § 87(2)(b) asks why PO Ramos and PO McGowan took his license a second time. Sgt. Hachemeister explains to § 87(2)(b) that he got pulled over for a VTL and the officers wanted to make sure that his license was not suspended. Then, Sgt. Hachemeister asks § 87(2)(b) “Been locked up before in the past or anything like that?” and “No warrants?” and “No weapons in the car? No knives, nothing like that?” (**Board Review 10**). In his CCRB interview, Sgt. Hachemeister stated that he believed these questions to be fair questions for a vehicle stop, and asked them solely for his safety because he wanted to go home at the end of the day (**Board Review 11**).

*People v. Garcia*, 20 N.Y. 3d 317 (2012), states, “Whether the individual questioned is a pedestrian or an occupant of a vehicle, a police officer who asks a private citizen if he or she is in possession of a weapon must have founded suspicion that criminality is afoot,” (**Board Review 12**). In *People v. Alexander*, 189 A.D.2d 189, the court found that although police conducted a valid vehicle stop due to a VTL, the officers could not question the occupants about a VCR in the backseat because the officers did not have any indicia of criminality in regard to the specific object; continuing, “Absent ‘founded suspicion’ of criminal activity,” an officer, “may not proceed to... ‘invasive questioning’ focusing on the ‘possible criminality’ of the subject.” Moreover, the court found that since the driver of the vehicle did not have his license and the vehicle was unregistered, the car could be impounded, but the questions about the VCR were not legal, since they did not relate to the license or the VTL (**16 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 13**).
- PO Ramos has been a member of service for ten years and has been a subject in four CCRB complaints and eight allegations, none of which have been substantiated.
  - § 87(2)(g)
- Sgt. Hachemeister has been a member of service for eight years and has been a subject in two CCRB complaints and four allegations, none of which have been substantiated.
  - § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On June 10, 2019, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt (**Board Review 14**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no criminal convictions in New York (**Board Review 15**).

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Squad No.: 3

Investigator: Michael Miskovski Inv. Michael Miskovski 03/25/2020  
Signature Print Title & Name Date

Squad Leader: Olga Golub SL Olga Golub 03/25/2020  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date